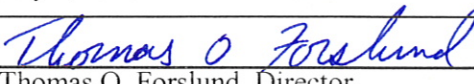


Thomas. O Forslund, Director

Governor Matthew H. Mead

Policy Title:	Uses and Disclosures of Protected Health Information	
Policy Number:	AS-003	
Effective Date:	July 1, 2013	
Approval:	 Thomas O. Forslund, Director	<u>5/21/13</u> Date

Purpose:

This policy identifies uses and disclosures of protected health information (PHI) that Wyoming Department of Health (WDH) is required, prohibited, and permitted to make in accordance with the Privacy and Security Rules and state law, and additional requirements for such uses and disclosures.

Scope:

This policy applies to all WDH workforce.

Policy:

1. **Assistance and consultation.** Due to the complexity of the rules regarding uses and disclosures (i.e., variables, exceptions, and required agreements), WDH workforce are strongly encouraged to consult with the WDH Compliance Office regarding uses and disclosures of PHI, and interpretation and application of the Rules. The WDH Compliance Office or its designee shall have reasonable availability to assist with questions regarding uses and disclosures.
2. **Required uses and disclosures.** WDH shall disclose PHI:
 - a. To an individual when requested under and required by 45 CFR § 164.524 regarding access to PHI or 45 CFR § 164.528 regarding accounting of disclosures; and
 - b. When required by the Secretary of the U.S. Department of Health and Human Services to investigate or determine WDH's compliance with the Privacy and Security Rules.
3. **Prohibited uses and disclosures.** WDH shall not use or disclose PHI:
 - a. That is genetic information for underwriting purposes.
 - b. To sell, unless the sale is authorized pursuant to a valid authorization.
4. **Uses and disclosures for treatment, payment, or health care operations** are permissive. WDH may:
 - a. Use or disclose PHI for its own treatment, payment, or health care operations.
 - b. Disclose PHI for treatment activities of a health care provider.
 - c. Disclose PHI to another health plan, healthcare clearinghouse, or a health care provider, collectively covered entity (CE), for the payment activities of its organization.
 - d. Disclose PHI to another CE for its health care operations activities, if:
 - i. Both WDH and the other CE have or had a relationship with the individual; and
 - ii. The disclosure is:
 - A. For health care operations (e.g., quality assessment, population-based activities, case management, care coordination); or

B. For the purpose of health care fraud and abuse detection or compliance.

5. Uses and disclosures pursuant to a valid authorization. WDH may use or disclose PHI pursuant to a valid authorization. A valid authorization is required:

- a. For any use or disclosure of PHI that is not otherwise permitted or required by the Privacy and Security Rules.
- b. For any use or disclosure of psychotherapy notes, except:
 - i. Use by the originator for treatment;
 - ii. Use or disclosure by WDH for its own training programs;
 - iii. Use or disclosure by WDH to defend itself in a legal action or other proceeding brought by the individual; or
 - iv. Use or disclosure by WDH that is otherwise permitted by the Privacy and Security Rules.
- c. For any use or disclosure of PHI for marketing purposes. If the marketing involves financial remuneration to WDH from a third party, the authorization shall state that such remuneration is involved. "Financial remuneration" is defined within the definition of "marketing."
- d. For any disclosure of PHI that is a sale of PHI. The authorization shall state that the disclosure will result in remuneration to WDH.

6. Uses and disclosures that require an opportunity for the individual to agree or object. WDH may:

- a. Use and disclose PHI for facility directories.
 - i. PHI shall be limited to the individual's:
 - A. Name;
 - B. Location in the facility;
 - C. Condition in general terms; and
 - D. Religious affiliation.
 - ii. For directory purposes, PHI may be disclosed to:
 - A. Members of the clergy; or
 - B. Other persons who ask for the individual by name.
 - iii. The individual shall be afforded the opportunity to object or restrict use or disclosure for directory purposes.
 - A. WDH shall inform the individual of both the PHI to be included in the directory and to whom information may be disclosed and allow the individual to restrict or prohibit some or all uses and disclosures.
 - B. If the individual is unable to object, due to incapacity or emergency circumstances:
 - I. WDH may use or disclose PHI for directory purposes so long as such disclosure is:
 - a. Consistent with the individual's prior expressed preference, if known; and
 - b. In the individual's best interests as determined by WDH in the exercise of its professional judgment.
 - II. WDH shall afford the individual an opportunity to object as soon as reasonably practicable.
- b. Use and disclose PHI:
 - i. To a family member, other relative, close personal friend, or other person identified by the individual for that person's involvement with the individual's care or payment related to the individual's health care.
 - A. PHI shall be limited to that which is relevant to the person's involvement with the individual's care or payment related to the individual's health care.

- ii. To notify a family member, personal representative, or another person responsible for the care of the individual of the individual's location, general condition, or death.
 - iii. To a public or private entity authorized by law or charter to assist in disaster relief efforts, for the purpose of coordinating the notification specified in b.ii., above.
 - iv. The individual's preferences or objections shall be honored.
 - A. WDH may use or disclose PHI, if the individual is present for, or otherwise available prior to, the use and disclosure, and WDH:
 - I. Obtains the individual's agreement;
 - II. Affords the individual an opportunity to object, and the individual does not express an objection; or
 - III. Reasonably infers from the circumstances, based on the exercise of professional judgment, that the individual does not object.
 - B. If the individual is not present, or is unable to object, due to incapacity or emergency circumstances:
 - I. WDH may use or disclose PHI as indicated in b.i., ii., and iii., above, so long as the disclosure is:
 - a. In the individual's best interests as determined by WDH in the exercise of its professional judgment; and
 - b. Limited to the PHI that is directly relevant to the person's involvement with the individual's health care.
 - C. If the individual is deceased, WDH may disclose PHI as indicated in b.i., ii., and iii., above, so long as the disclosure is not inconsistent with any prior expressed preference of the individual that is known to WDH.
- 7. Uses and disclosures that do not require a valid authorization or an opportunity for the individual to agree or object.** Without a valid authorization and without affording the individual an opportunity to agree or object, WDH may make the following disclosures subject to review with the WDH Compliance Office or its designee:
- a. Uses and disclosures that are required by law.
 - b. Uses and disclosures for public health activities.
 - c. Disclosures about victims of abuse, neglect, or domestic violence.
 - d. Uses and disclosures for health oversight activities.
 - e. Disclosures for judicial and administrative proceedings.
 - f. Disclosures for law enforcement purposes.
 - g. Uses and disclosures about decedents.
 - h. Uses and disclosures for cadaveric organ, eye, or tissue donation purposes.
 - i. Uses and disclosures for research purposes.
 - j. Uses and disclosures to avert a serious threat to health or safety.
 - k. Uses and disclosures for specialized government functions.
 - l. Disclosures for workers' compensation.
- 8. Other requirements relating to uses and disclosures of PHI**
- a. WDH may use or disclose a limited data set, if WDH enters into a data use agreement with the limited data set recipient.
 - b. WDH may use PHI for underwriting subject to the prohibition on use of genetic information.
 - c. WDH may not disclose PHI that has been restricted from disclosure.

- d. WDH may disclose PHI to a business associate, if WDH obtains satisfactory assurances that the business associate will appropriately safeguard the PHI by implementing a written contract or other arrangement with the business associate that satisfies the requirements of 45 CFR § 164.504(e).
- e. Regarding uses and disclosures of deceased individuals' PHI, WDH shall adhere to the use and disclosure requirements of the Privacy and Security Rules for fifty (50) years following the death of the individual.
- f. WDH shall communicate PHI consistent with WDH Policy AS-002; Client Privacy Rights regarding communication by alternative means or at alternative locations.
- g. WDH shall use and disclose PHI consistent with WDH policies.
- h. WDH shall use and disclose PHI consistent with the minimum necessary principle as articulated in WDH Policy AS-004; Minimum Necessary Information.
- i. WDH shall describe its uses and disclosures of PHI in its Notice of Privacy Practices (NoPP) and shall not use or disclose PHI in a manner inconsistent with such NoPP.
- j. A WDH workforce member or business associate may disclose PHI to a health oversight agency or attorney, if the workforce member or business associate believes in good faith that WDH has engaged in conduct that is unlawful or violates professional or clinical standards, or that the care, services, or conditions provided by WDH potentially endangers one or more patients, workers, or the public.
- k. A WDH workforce member who is the victim of a criminal act may disclose to a law enforcement official PHI about the suspected perpetrator that is limited to the following information:
 - i. Name and address;
 - ii. Date and place of birth;
 - iii. Social security number;
 - iv. ABO blood type and rh factor;
 - v. Type of injury;
 - vi. Date and time of treatment;
 - vii. Date and time of death, if applicable; and
 - viii. A description of distinguishing physical characteristics.
- l. WDH workforce shall verify a requestor's identity before disclosing PHI. The R-002; WDH Disclosure Reference is a helpful tool for verification and disclosure purposes.

Contacts:

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Tate Nuckols, JD, WDH Security Officer, (307) 777-2438

Forms:

F-001; Notice of Privacy Practices
F-005; Access to Records Request
F-005a; Access to Immunization Records Request
F-011; Use or Disclosure Authorization
F-012; Use and Disclosures Restriction Request
F-014; Accounting of Disclosures Request

Policies:

AS-002; Client Privacy Rights
AS-004; Minimum Necessary Information
AS-014; Legal Occurrences
AS-020; Business Associate Agreements and Other Arrangements

References:

45 CFR §§ 164.501-502
45 CFR §§ 164.506-514
45 CFR § 164.530
42 CFR Part 2
Wyo. Stat. §§ 16-3-107(h) and 9-2-126

Tools:

R-002; WDH Disclosure Reference

Training: